



INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference KTC/P501162WO		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/GB 03/05242	International filing date (day/month/year) 01.12.2003	Priority date (day/month/year) 30.11.2002	
International Patent Classification (IPC) or both national classification and IPC G01N1/00			
Applicant MARKES INTERNATIONAL LIMITED et al.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion</p> <p>II <input type="checkbox"/> Priority</p> <p>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p>IV <input type="checkbox"/> Lack of unity of invention</p> <p>V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p>VI <input type="checkbox"/> Certain documents cited</p> <p>VII <input type="checkbox"/> Certain defects in the international application</p> <p>VIII <input type="checkbox"/> Certain observations on the international application</p>			
Date of submission of the demand 21.05.2004		Date of completion of this report 18.03.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized Officer Bockstahl, F Telephone No. +31 70 340-3652 	

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I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-8 as originally filed

Claims, Numbers

1-21 as originally filed

Drawings, Sheets

1/2-2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-21
Inventive step (IS)	Yes: Claims	
	No: Claims	1-21
Industrial applicability (IA)	Yes: Claims	1-21
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Reference is made to the following documents:

- D1:** US-B-6 409 9681 (TAKAHASHI KATSUAKI) 25 June 2002 (2002-06-25)
- D2:** US 2002/157483 A1 (LIN MIN-NAN ET AL) 31 October 2002 (2002-10-31)
- D3:** EP-A-0 459 677 (THERMEDICS INC) 4 December 1991 (1991-12-04)
- D4:** US-A-5 014 541 (CATES MARION ET AL) 14 May 1991 (1991-05-14)
- D5:** PATENT ABSTRACTS OF JAPAN vol. 018, no. 574 (P-1821), 2
November 1994 (1994-11-02) & JP 06 213784 A (MITSUI KINZOKU
SHIGEN KAIHATSU KK), 5 August 1994 (1994-08-05)
- D6:** US-A-5 402 668 (MURAKAMI AKI A ET AL) 4 April 1995 (1995-04-04)
- D7:** EP-A-1 004 871 (MARKES INTERNATIONAL LIMITED) 31 May 2000
(2000-05-31)

2. The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of **independent claims 1, 11 and 16** is not new in the sense of Article 33(2) PCT.

2.1 The document **D1** discloses (see abstract; figures 1-11; column 1, line 6 - column 2, line 21; column 2, line 23 - column 3, line 62):

- an analytical apparatus for automatically carrying out a plurality of analytical steps, which apparatus includes:
- a releasing device (first pipetting device) for releasing a sample from a sampling tube (reaction container);
- a device for analysing a first portion of the released sample;
- a collecting device (backup reaction container) for collecting a second portion of the released sample;
- a device for re-releasing (second pipetting device) the collected said second portion of the sample; and
- a device for analysing the re-released portion of the sample.

The subject-matter of **independent claim 1** is therefore not new.

2.2 The same reasoning applies, mutatis mutandis, to the subject-matter of the

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corresponding **independent claims 11 and 16** which therefore are also considered not new.

- 2.3 The same objections are raised against novelty of **independent claims 1, 11 and 16** having regard to the disclosure of documents **D2 to D7**, see the corresponding passages cited in the search report.
3. **Dependent claims 2-10, 12-15, 17-21** do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, see documents **D1 to D7** and the corresponding passages cited in the search report.